

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, October 4, 2021
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Public Comment
5. Consent Agenda
 - a.) Approval of September 7, 2021 Council Minutes
 - b.) FY 21-22 Budget Amendment #2
 - c.) FY 21-22 Budget Amendment #3
 - d.) FY 21-22 Budget Amendment #4
 - e.) Authorization to Present Service Weapon
 - f.) Reallocation of Police Records Clerk II Position to Patrol Sergeant
 - g.) 2022 Town Council Meeting Dates and Times Resolution
 - h.) Resolution in Opposition to Environmental Budget Provisions Included in Senate Bill 105
 - i.) Interlocal Agreement between Dare County, Towns of Duck, Southern Shores and Kill Devil Hills, NC Concerning Beach Renourishment
 - j.) Resolution Providing for the Issuance of a Special Obligation Bond (Town Portion) Series 2021A
 - k.) Bond Order Authorizing the Issuance of Special Obligation Bonds of the Town of Kitty Hawk (Town Portion)
6. Items Removed from the Consent Agenda
7. Public Hearing:
 - a.) Zoning Map Amendment: 3722 N Croatan Hwy; applicant proposes to rezone a portion of the parcel to BC-1 to correct an existing split-zoning.
 - b.) Zoning Text Amendment: Proposal to amend Sec. 42-1 Definitions. 42-250, BC-1; 42-251, BC-2; 42-277, VC-2; and 42-278, VC-3; to define, and allow "tattoo studios" as a special use. **Ordinance No. 21-10**
 - c.) Zoning Text Amendment: Staff initiated proposal to amend Sec. 42-1 to define and limit the number of "accessory living structures", structures containing conditioned living space that does not meet the definition of either a dwelling unit or an accessory dwelling unit. **Ordinance No. 21-11**
8. Planning:
 - a.) Nonconforming Pier Replacement: Proposal to replace an existing nonconforming pier, located at 3800 Elijah Baum, with a wider pier and larger platform.
 - b.) Schedule Public Hearing: Zoning Text Amendment: Proposal to amend Sec. 42-1; 42-619; 42-622; 42-275 to amend existing travel trailer park regulations, and to add as a special use in the VR-3, high density village residential district. The applicant has requested this hearing be scheduled for the December 6, 2021 council meeting.

Kitty Hawk Town Council Minutes: October 4, 2021
Page 2

9. New Business:

- a.) Nominations for the Outer Banks Visitors Bureau Tourism Board
- b.) Consideration of Additional Sand Placement in “Hot Spot” Areas
- c.) Presentation of Conceptual Floor Plan for New Police Station and Fire Bay

10. Reports/General Comments from Town Manager

11. Reports/General Comments from Town Attorney

12. Reports/General Comments from Town Council

13. Closed Session:

- a.) NCGS 143-318.11(a)(3) To consult with the town attorney to protect the attorney client privilege (*this was not needed and was not utilized*)
- b.) NCGS 143-318.11(a)(6) Town Manager Evaluation

14. Return to Regular Session

15. Adjourn

COUNCILMEMBERS PRESENT:

Mayor Gary Perry, Mayor Pro Tem Craig Garriss, Councilman David Hines, Councilwoman Lynne McClean and Councilman Jeff Pruitt

STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, Planner Rob Testerman, Police Chief Joel Johnson

1. CALL TO ORDER

Mayor Perry called this meeting to order at 6 p.m.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

Following a moment of silence, the Pledge of Allegiance was recited.

3. APPROVAL OF AGENDA

MPT Garriss made a motion, seconded by Councilwoman McClean, to approve the agenda. The vote was unanimous 5-0.

4. PUBLIC COMMENT

There were no public comments.

Kitty Hawk Town Council Minutes: October 4, 2021
Page 3

5. CONSENT AGENDA

a.) Approval of September 7, 2021 Council Minutes. *(An approval of the consent agenda will approve these minutes.)*

b.) FY 21-22 Budget Amendment #2. This amendment, in the amount of \$141,007, will recognize a grant from the Department of Homeland Security to the fire department for the replacement of mobile radios. *(An approval of the consent agenda will approve this amendment.)*

c.) FY 21-22 Budget Amendment #3. This amendment, in the amount of \$30,476, is for encumbrances from the previous fiscal year and will appropriate funds in the current budget for open purchase orders and contracts for which goods had not been received or services performed as of June 30, 2021. The goods and services were budgeted in Fiscal Year 2020-2021. *(An approval of the consent agenda will approve this amendment.)*

d.) FY 21-22 Budget Amendment #4. This amendment, in the amount of \$25,000, will transfer funds from the capital reserve fund to the general fund/Ocean Rescue to purchase 8 radios, chargers, microphones and programing. This purchase will bring Ocean Rescue in compliance with upcoming changes in communications platform requirements. *(An approval of the consent agenda will approve this amendment.)*

e.) Authorization to Present Service Weapon. Police Sgt. K. Brian Strickland retired on October 1, 2021 from the town after 28 years of service in law enforcement and Sgt. Jeffery W. Wiggins retired from the town on September 1, 2021 after 21 years of law enforcement. The chief of police is requesting permission to present them their service weapon for \$1 each in recognition of their distinguished service as provided for in NCGS 20-187.2 *(An approval of the consent agenda will approve this request.)*

f.) Reallocation of Police Records Clerk II Position to Patrol Sergeant. The police department currently has two records clerk positions. Chief Johnson is requesting one of them be reallocated to a patrol sergeant position. The proposed change would not adversely impact the department's current budget. *(An approval of the consent agenda will approve this change.)*

g.) 2022 Town Council Meeting Dates and Times Resolution. The Kitty Hawk Town Council regular meeting is the first Monday of each month at 6 p.m. If that first Monday is observed as a town holiday the meeting will be rescheduled for Tuesday or the following Monday. When the Dare County Board of Elections is using the Smith Room for an election following a council meeting, the council meeting will begin at 5:00 p.m. The resolution also adds a tentative January 31st Capital Improvements Plan workshop and a Budget Workshop on April 25th (both at 9 a.m.) *(An approval of the consent agenda will adopt this resolution.)*

h.) Resolution in Opposition to Environmental Budget Provisions Included in Senate Bill 105 (The appropriations Bill). This resolution expresses opposition to Senate Bill 105 Section 5.14(a) entitled "Property Owners' Rights/Tree Ordinances," Section 41.47(a) entitled "Revisions to Outdoor Advertising Control Act" and Section 12.16.(a) entitled "Clarify Local Authority for Stormwater Ordinances" and urges the North Carolina General Assembly and the Governor of the State of North Carolina to oppose the proposed legislation. *(An approval of the consent agenda will adopt this resolution.)*

i.) Interlocal Agreement between Dare County, Towns of Duck, Southern Shores and Kill Devil Hills, NC Concerning Beach Renourishment. This agreement allows for significant cost savings by cooperating to construct the beach renourishment projects into a single construction contract. *(An approval of the consent agenda will adopt this agreement.)*

j.) Resolution Providing for the Issuance of a Special Obligation Bond (Town Portion) Series 2021A. This resolution provides for the issuance of a special obligation bond not to exceed \$5,387,682 to pay the cost of the town's portion of the 2022 beach renourishment project. *(An approval of the consent agenda will adopt this resolution.)*

Kitty Hawk Town Council Minutes: October 4, 2021
Page 4

k.) **Bond Order Authorizing the Issuance of Special Obligation Bonds of the Town of Kitty Hawk (Town Portion).** This bond order authorizes the issuance of a special obligation bond not to exceed \$5,387,682. *(An approval of the consent agenda will adopt this bond order.)*

Councilwoman McClean made a motion to approve the consent agenda. It was seconded by Councilman Pruitt and passed unanimously, 5-0.

6. ITEMS REMOVED FROM THE CONSENT AGENDA

No items were removed.

7. PUBLIC HEARINGS:

a.) Zoning Map Amendment: 3722 N Croatan Hwy; applicant proposes to rezone a portion of the parcel to BC-1 to correct an existing split-zoning.

MPT Garriss made a motion, seconded by Councilwoman McClean, to go into public hearing. The vote was unanimous, 5-0.

Planner Testerman reviewed the following staff report.

Property Address: 3722 N Croatan Hwy
Parcel ID Number: 987512778299
Current Zoning: Beach Residential (BR-1)/Beach Commercial (BC-1)
Proposed Zoning: Beach Commercial (BC-1)

Proposal

A portion of the subject property is proposed to be rezoned from Beach Residential (BR-1) to Beach Commercial (BC-1). There are no current proposals for any additional development on site. The property is "split-zoned", and it has been a goal of the Town to correct these split zoned properties.

Background Information

The subject property was split-zoned at the time of the establishment of the current zoning districts (the property lines did not match up with the zoning lines). The eastern half of the subject property is presently zoned Beach Commercial (BC-1). The remaining half of the property is presently zoned Beach Residential (BR-1). The subject property is 3.7 acres in size and presently houses a multi-unit commercial building. Currently, the property can only be accessed off N. Croatan Highway as the BR-1 portion of the parcel is landlocked.

Having split zoned parcels complicates any future development/redevelopment proposals when determining setbacks, calculating lot coverage maximums, and even looking at approved uses.

The adjoining properties to the west are zoned Beach Residential (BR-1) and contains single-family residences in the First Flight Ridge subdivision. The two adjacent properties to the east, across N. Croatan are zoned Beach Commercial (BC-1) and contain various commercial uses. The northern property contains the Barefoot Bernie's, and the southern parcels contain Miss Lizzie's, and the Harbour Bay shops, all zoned BC-1.

In review of the application survey (attached), it appears that the proposal indicates a request to rezone a portion shown on the survey as "Overlap Area", in the northwestern corner, listed as PIN Number 987512777317. It appears as though this parcel is not under the same ownership as the main subject parcel and was not included as part of the Planning Board's recommendation of approval.

Kitty Hawk Town Council Minutes: October 4, 2021

Page 5

Staff Analysis

Current Zoning: Split-zoned BC-1/BR-1. The Beach Residential (BR-1) district allows mainly single-family residential uses. A handful of limited institutional and commercial uses are also permitted as conditional uses. The intent of the BR-1 district is to encourage the development of low-density residential neighborhoods in Kitty Hawk.

Proposed Zoning: BC-1. The Beach Commercial (BC-1) district allows a variety of residential, institutional, office, and commercial uses. The intent of the BC-1 district is to provide for the commercial needs of the neighborhood and immediate surrounding geographical area. The commercial development will be characterized by small to medium size land parcels with commercial development of low intensity. The BC-1 district is not intended to be developed for shopping centers, shopping malls, or big box retail/wholesale businesses.

Proposed Development: Staff has not been made aware of any proposed development or redevelopment of the subject parcel.

Land Use Plan

It is important to note that approval of a rezoning request is not legally required to be consistent with the Town's adopted land use plan. However, the land use plan is an important document to consider as it is intended to help guide the pattern of development in the Town.

The Town of Kitty Hawk's adopted CAMA Land Use Plan appears to designate the subject property partially as a **Commercial, Shopping, and Working Area** and partially as a **Lower Density Residential Area**, consistent with the split-zoning of the property.

The plan provides the following description for a **Commercial, Shopping, and Working Area**:

"Commercial, shopping, and working areas include areas that primarily encourage the concentration of commercial facilities in clusters or group developments and to provide readily accessible shopping facilities and will provide for the proper grouping and development of commercial facilities to serve permanent and seasonal residents and the general public. Some of these areas are envisioned to provide limited mixed uses."

The plan provides the following description for a **Lower Density Residential Area**:

"Residential areas should provide for the low-density development of single-family detached dwellings in an environment which preserves natural features to the extent possible and promotes stable, permanent neighborhoods."

The following general goal and policy may also be considered when reviewing the application's consistency with the adopted land use plan:

"GOAL #4: Ensure continued commercial development in commercially zoned areas of Kitty Hawk and the continued vitality of existing businesses."

"POLICY #4a: Kitty Hawk, through its zoning ordinance, will continue to direct the placement of commercial development in areas zoned for such activities."

As part of its review, the Planning Board is asked to determine the consistency of this zoning amendment proposal with the adopted CAMA land use plan.

Planning Board Recommendation

At its August 12, 2021 meeting the Planning Board unanimously recommended approval of the proposed zoning map amendment to correct the split zoned parcel located at 3722 N Croatan Hwy

Testerman: With regards to the planning board's motion, it only applies to the large parcel.

Kitty Hawk Town Council Minutes: October 4, 2021
Page 6

Varnell: *As opposed to the small sliver. The survey includes it, so I think that must be taken into consideration. I think the intent of the motion was to have all the area that the town is willing to consider for rezoning considered. If the applicant so chooses, I think it is still within his realm to ask for that sliver, if you will, the outparcel there to be rezoned as well.*

Testerman: *I think my question was, since the listed ownership is First Flight, LLC if the applicant has the authority to ask for that portion to be rezoned. We can come back to it.*

Pruitt: *Rob this is not the first time we have done this correct? It has been done in pretty much this same area.*

Testerman: *Yes. I think in the first month or two I began working for the town we were doing the same thing just to the north at Barefoot Bernie's. Also, in front of Wal-Mart I think they were split zoned between BC-1 and BC-3 and the town went about correcting those as well.*

Pruitt: *Do we have very many more of them?*

Testerman: *I do not believe there are too many left.*

Perry: *I want clarity on the sliver. Everything we are looking at tonight is within the red line. Is that correct?*

Testerman: *The property owner that applied for the rezoning owns parcel 3722 North Croatan Highway. The survey that came to me as part of the zoning map amendment request had this pink dash line indicating they are requesting that part to be rezoned to BC-1 as well. Given the ownership information that shows from Dare County my question is whether they can ask for it as well.*

Perry: *But do they own it?*

Varnell: *Mayor I think maybe the engineer and the attorney are here and perhaps having them ...*

Perry: *If they do not own it, I do not know how we can. I mean we can rezone it yes. They won't retain ownership, right?*

Varnell: *I think this could very well be a survey error from a while back and combined with the Dare County tax office inputting what they see on paper.*

Perry: *The bottom-line question is this. If we rezone or get rid of this split zoning it is not going to affect ownership as far as we are concerned.*

Varnell: *Correct.*

Kitty Hawk Town Council Minutes: October 4, 2021
Page 7

Perry: *That is all I care about. Did that bring up any other questions for anybody else?*

Pruitt: *The property lines on the houses to the north ... by including that strip are we going to make them split zoned now? By adding that slip?*

Varnell: *That will not hurt. In looking at the survey for the subdivision and measuring one of the First Flight Ridge lots ... those boundaries match up with the subdivision plat. That is what they would have the rightful claim to. Now if there are some other disputes out there ... that is what it is but based on the subdivision plat this matches up. We would not be affecting their lots. That is correct.*

Testerman: *I will add another topic because I did get some phone calls from neighbors in the First Flight Ridge area about how it might impact them. I do not have anything that has been discussed with me for any redevelopment plans or anything but in the event it does come across my desk or to the planning board and council, our ordinance requires wherever a commercial zone abuts a residential zone there is a 50' setback. No structures will be within 50' of the residential zone. We have vegetative buffer requirements. If anything comes in it will not be developed right up into their back yards. I just want to mention that because I have had some phone calls.*

Perry: *I am glad you did because it is appropriate. Is there anyone in the audience that wishes to come forward?*

1. Ann Wellham, 105 First Flight Run, Kitty Hawk, NC: *It just happens that we are the owners of 105 First Flight Run and for two weeks now we have been in touch with the Dare County tax office inquiring specifically about that parcel of property. When we found that it was under owner conflict, we wanted to make sure that we checked into our ability to obtain that property to extend our lot. It is a 5,000 square foot area parcel and for the last 10 years nobody has paid taxes on it. We inquired and I suppose I spoke to this gentleman last week to figure out how a property owner could go about acquiring that property. Since they put this rezoning in with regards to the old Jordan property it made it more imperative for us to want to obtain that property because as we all know 50' is nothing. You could put a couple of trees and a big old parking lot right behind our property and there are a few problems that could happen with that. Anybody who has been in an area where there is commercial property there is additional traffic and there are wastewater issues. We currently have, every time it rains, a large pond of water that comes into our back parcel from Jordan's parking lot and from Barefoot Bernie's parking lot. We tried several different measures with regards to ... working on putting in a catch basin to slow it down because we cannot stop it. Now you are going to add additional potential parking if that becomes commercial and every morning, or every Monday, Wednesday and Friday at 4 o'clock in the morning dumpsters are being emptied all year round. So, you have an increase in noise, you have an increase in traffic and you have families that live in these neighborhoods.*

Kitty Hawk Town Council Minutes: October 4, 2021
Page 8

Now I am not opposed to having commercial businesses, they are the bread and butter of Dare County. However, they have that whole front section of Croatan Highway and why do they have to come back and build commercial property back there. Hearing and speaking today about adding that additional sliver, which is not a sliver, it is 5,000 square feet. People build houses on 5,000 square feet. Taking that parcel and saying well we want to add that to our rezoning. He does not even own it.

My request is to have this council review it carefully and have somebody answer my question in the Dare County tax office how an owner of a property, adjacent to one that is in conflict, can become the owner. Thank you.

Perry: *That leads me to a question before I call for any others. The sliver in question. If council decides to do away with the split zoning in the red section and leave the sliver alone, are we correct in doing that? And let the parties figure out who owns what there.*

Varnell: *Yes, you can take that option.*

Pruitt: *Was that not the recommendation of the planning board?*

Testerman: *They made their motion based on the address of 3722. Unfortunately, I did not catch that part until after the planning board had gotten to it but I wanted to bring it to council's attention.*

2. David Ryan, Creative Engineering Solutions, Manteo, NC: *Good evening. I am representing the applicant for this proposal. It is not intended for the sliver in this case to create a hardship for anybody so the applicant would be amenable to going ahead and removing that as part of his request. To go ahead and coincide with the boundaries of the property. We understand right now that the sliver is in conflict. If it pleases you, we can go ahead and scale back and remove that from this request.*

Council thanked Mr. Ryan.

3. Susan Martin, 211 Eagle Landing, Kitty Hawk, NC: *My husband and I have been owners of a home in First Flight Ridge for 14 years now. We live on Eagle Landing. When we purchased our home, we met with our attorney to find out what that parcel was directly behind our home. What it was zoned. It was zoned residential at the time we purchased our lot. So, we were fine with that because we knew that some homes could be built there.*

Not in favor of it changing to a commercial zoning for many of the reasons that my neighbor already addressed. I think it will impact the value of our community. First Flight Ridge is a gated community. We have certain guidelines for our homeowners as far as architectural and landscaping guidelines. The community is very well maintained, and I feel that even though Rob says he has not received any request for commercial development I feel confident that the person

Kitty Hawk Town Council Minutes: October 4, 2021

Page 9

applying for this application will be looking to sell the property or use it in a development themselves in a commercial way rather than residential.

To the point that there is a lot more noise coming there with trash pickup we do have plenty of commercial property now. I think we have a need for more residential property, and I do not feel like our neighborhood was actually given very much time to prepare for this meeting because there were two letters that were sent out. One with a wrong address for us and then another one just a few days ago that said come to this meeting tonight. You know if we had more time perhaps more of our neighbors could voice their opinion and direct to the council what their wishes are too. I know there are many homes on Eagle Landing including ours that are definitely impacted by this proposal and the ones coming in on First Flight Run also.

I would like for you to consider this carefully. Maybe let us do some more due diligence with our neighborhood to give you some more insight into what people really want.

4. Richy Howell, First Flight Ridge, Kitty Hawk, NC: *I am a resident of First Flight Ridge. My property backs up to what we are talking about here and I completely agree with Susan in that I do not think we were given enough time to properly address this problem and seek a proper remedy. I would like to ask for more time. That is it. Thank you.*

5. Chad Weeks, 4015 Creek Road, Martin's Point, Dare County, NC: *I own property on Eagle Landing as well and I know, as someone mentioned, that this has been done before. It is not the first time that something in our area has been changed from BR-1 to BC-1. In that particular scenario it seemed to be handled a lot differently. It was something we had to consider. It was a _____ owner yes. That is much different, but we were given plenty of time there. We voted on it, we talked to the owner about what it was about, and it was something we understood. The owner of Barefoot Bernie's had a septic issue or needed to expand his parking lot and do septic and out of our voting and grace of allowing it ... that we did it to benefit our community. And so, I feel like that was something handled differently, and we did show some compassion for his situation in allowing him to keep his business going and expanding. In that use it would just be for something flat, turning residential into a septic field and we were fine with it. So, for certain uses we kind of understand it but we also bought property there as it is now and so backing up to trees _____ lot as Susan mentioned and Richard and Alice and everybody that is in here. That is a different situation than buying a lot that is up to a commercial property that is zoned that way. I do not see how the compensation ... I do not know how you would compensate for that but just that other situation was different, and we gave that consideration. Thank you.*

Stewart: *What is the setback in the BR-1 versus the BC-1? Is it the same?*

Testerman: *The BR-1 setbacks are 25' front and rear and 10' on the side minimum. I mentioned we have a 50' buffer area for a setback from residential to a commercial zone. I guess from structure to structure if you push it all the way up to the setbacks you would have a minimum of 75', 25' on the residential lot, 50' on the commercial lot and then ...*

Kitty Hawk Town Council Minutes: October 4, 2021
Page 10

Perry: *It is basically a landlocked area as residential.*

Testerman: *Correct.*

Perry: *There is no access to it except through a commercial lot.*

Testerman: *One other thing I will add. It would not be something the town would review or permit but if there were a commercial redevelopment plan it would be assumed they would be looking to do something in the back. If their disturbed area or impervious area reaches a certain threshold, I think it is one acre, they would be required to get a state stormwater permit. Given when this building and lot was developed, they probably did not have as stringent stormwater regulations as there are in place today. A lot of the stormwater issues that exist from that lot would probably be resolved. I know that is only one of the concerns and that is something the state would be reviewing.*

Garriss: *And just so we are sure, as everybody has discussed, the outlined crossing has been taken out of play. If we approve or deny tonight it is not going to affect that one bit. Correct?*

McClean: *The sliver.*

Testerman: *Yes. The applicant mentioned withdrawing it.*

Mayor Perry made a motion to go back into regular session. MPT Garriss seconded and it passed unanimously, 5-0.

Perry: *We have had some good comments tonight. Some concerned people that I really did not expect but that is alright. That is what it is all about. I am glad you came out and spoke to us. There are a couple of things we can do. We can make a decision tonight or we can table it until the next meeting and then make a decision. Which way do you want to go?*

Pruitt: *Considering the amount of feedback we have gotten tonight ... I do not think a lot of us were expecting it. Since we started cleaning up these parcels, we have not run into this. If we defer it then they would have a chance to talk to their neighbors and bring it back to us and that is fine with me. If that is what the rest of the board ...*

Perry: *But we are not proposing another hearing per se, but they could send us information.*

Varnell: *Correct.*

Perry: *There are many ways of communication.*

Pruitt: *They could email us.*

Kitty Hawk Town Council Minutes: October 4, 2021
Page 11

Varnell: *There will only be discussion amongst the board.*

Perry: *I just wanted to make sure everybody understood that. Because some of the folks seemed like they wanted to get out and have other people talk. David, your thoughts?*

Hines: *We are trying to clean things up. You must listen to what everybody has to say but we have been working on cleaning this up before tonight. So ... I mean ...*

Perry: *You are okay with tabling it for a month?*

Hines: *I am. They can have more time to ...*

McClean: *I have no problem tabling it, but I would like to make everyone aware the status of the sliver ... it is out of consideration. We need to say that and if it is still going to be considered we need to say that. But I would like to see the sliver ...*

Perry: *The sliver goes away. We all agree on that. How about you?*

Garriss: *I agree with the tabling, but we need to keep in mind, Rob has told us before we have many just like this we need to clean up.*

Mayor Perry made a motion to table this for further consideration, until the November meeting.

Perry: *Having done that I also want Rob to send notices to everybody you can think of in that area, or have you already done that?*

Testerman: *By state statute we send notices to any adjacent property owners. If you wanted to expand that out ...*

Perry: *It is probably not necessary. I think these folks are going to take care of it for us. Just make sure everybody understands it will not be another hearing, but we will listen to whatever comes to us in any form that it comes to us short of standing like you did tonight. That is just the way it works. I made a motion.*

Councilwoman McClean seconded the motion to table and the vote was unanimous 5-0.

b.) Zoning Text Amendment: Proposal to amend Sec. 42-1 Definitions. 42-250, BC-1; 42-251, BC-2; 42-277, VC-2; and 42-278, VC-3; to define, and allow "tattoo studios" as a special use.

Mayor Perry made a motion, seconded by Councilwoman McClean, to go into a hearing on the zoning text amendment for tattoo studios. The vote was unanimous, 5-0.

Kitty Hawk Town Council Minutes: October 4, 2021
Page 12

Planner Testerman reviewed the following staff report.

Proposal

The applicant has proposed a text amendment that would allow, as a special use and with specific conditions, a tattoo studio in the BC-1, BC-2, VC-2 and VC-3 districts. In addition to the proposal of allowing the proposed use as a special use, a definition has been proposed for Sec. 42-1, *Definitions*.

The applicants request, as originally proposed, is listed below, however it should be noted that the Planning Board recommendation of approval omitted the special use from the BC-1 district and altered the hours of operation from 8:00am to 8:00pm. The applicant was agreeable to these modifications.

42-1. Definitions

Tattoo studio means an establishment which the activity of tattooing occurs. Tattooing means the inserting of permanent markings or coloration, or the production of scars, upon or under human skin through puncturing by use of a needle or other method.

Sec. 42-250(c)36.; 42-251(c)35.; 42-277(c)12.; 42-278(c)17. – Special uses.

Tattoo studios, subject to the following conditions:

- a) **Shall meet the separation requirements listed below for minimum distance in a straight line from the property line:**
 - 1. Church, school, public park, or libraires: 200 feet**
 - 2. Other tattoo studios: 400 feet**
- b) **Health department and any other applicable local and state agency approval is required.**
- c) **Hours of operation shall be limited to 8:00am to 10:00 p.m.**
- d) **The Planning Board may recommend to the Town Council, and Town Council may impose, any additional conditions that they determine are appropriate based on surrounding.**

Background & Analysis

Currently Kitty Hawk does not allow tattoo studios as a permitted, or special use, in any of its zoning districts. The applicant has included the four separate zoning districts, however Council is not obligated to approve, or deny in an all or none manner, as noted, the Planning Board omitted the BC-1 district from their recommendation of approval.

The BC-1 district is established to provide for the proper grouping and development of commercial facilities in Kitty Hawk Beach. The BC-1 district has been established to provide for the commercial needs of the neighborhood and the immediate surrounding geographical area. The commercial developments are meant to be characterized by small to medium size land parcels with commercial development of low intensity. Uses permitted in the BC-1 include offices, retail, and service establishments. There is a wide variety of special uses permitted in the BC-1 district.

The BC-2 district is established to provide for the development of commercial facilities in Kitty Hawk Beach to furnish a broad range of services and commodities to serve the entire community. It has been established to provide for the commercial needs of the town and in the immediate surrounding geographical area. The commercial development of the district is meant to be characterized by medium to large size land parcels with commercial development of medium intensity. Permitted uses include all those permitted in the BC-1, with the addition of home center sales, cabinet and woodworking shops, and marinas.

The VC-2 district is established to provide for the development of commercial facilities in Kitty Hawk Village and furnish a broad range of services and commodities to serve the entire community. Permitted uses include offices, retail, service establishments, cabinet and woodworking shops, hardware sales and rental, medical equipment sales and rental, and rental of household furnishing and equipment.

The VC-3 district is established to provide for the development of commercial and light industrial facilities and uses in Kitty Hawk Village to better furnish a broad range of services and commodities to serve the entire community, including, but not limited to commercial laundry, building supply facilities, construction equipment storage and servicing, manufacturing, and production and marketing of concrete and concrete products.

Kitty Hawk Town Council Minutes: October 4, 2021
Page 13

NCGS 160A-174 lists situations in which an ordinance would be inconsistent with NC or federal law, and is preempted. 160A-174(b)(2) states that an ordinance is inconsistent with state law if the ordinance “makes unlawful an act, omission, or condition which is expressly made lawful by State or federal law.” Guidance from the School of Government gives the opinion that North Carolina state law makes tattooing lawful in our state. Kitty Hawk does not expressly prohibit tattoo studios currently but does not have a zoning district where they are permitted by-right or by special use. I have been advised by Adam Lovelady, Associate Professor of Public Law and Government at the School of Government at UNC-Chapel Hill that the referenced post in Coates’ Canons is still good guidance on the subject.

Other Outer Banks Communities

Not permitted in Duck, Southern Shores and Kill Devil Hills

Nags Head: Conditional/special use in the C-3, commercial district.

Manteo: Conditional/special use in the B-2, General Business District, no specific conditions attached

Dare County: Conditional/special use in VC-2, Village Commercial, no specific conditions attached

There are currently three tattoo studios in Dare County, one located in Mann’s Harbor, one on Hatteras Island, and the other in unincorporated Dare Co. on Colington Road, and according to the Dare County Planning Department, as well as Dare County Health and Human services neither have generated any complaints or been any type of nuisance.

Consistency with Land Use Plan

The following policies and objectives relevant to this application are stated in the CAMA Land Use Plan:

Goal #4: Ensure continued commercial development in commercially zoned areas of Kitty Hawk and the continued vitality of existing businesses.

Policy #4a: Kitty Hawk, through its zoning ordinance, will continue to direct the placement of commercial development in areas zoned for such activities.

Objective #4a: Enforce and amend as necessary, the Town’s zoning ordinance

Objective #4b: Periodically assess land use type needs, commercial zoning district boundaries, economic development conditions and emerging trends, and the types of permitted uses allowed in commercial zoning districts.

Planning Board Recommendation

At its August 12, 2021 meeting, the Planning Board unanimously recommended approval of the proposed text amendments, with two changes to the proposal, which the applicant was agreeable to. The Planning Board recommended approval for the BC-2, VC-2 and VC-3 districts, omitting the BC-1 from the recommendation. Additionally, the Board recommended altering the operation hours from 8AM – 10PM to 8AM -8PM.

Perry: *For the record I received an email today from Jim and Sara Twiddy. Jim apparently is one of the people that will work in the tattoo parlor. In summation of what he has written they want this to be approved.*

1. William Nash, 105 Virginia Dare Ct., Kill Devil Hills, NC: *First off thank you for hearing everybody. I appreciate it. Tattoos have always had a stigma behind them which is rapidly changing. That is one of the big things I want to point out. Old stigmas are going away. Your police officer, firefighters, your EMS, even schoolteachers are all getting tattoos. That is who you*

Kitty Hawk Town Council Minutes: October 4, 2021
Page 14

see in your shops. Whether it is police officers getting a tattoo in remembrance of someone that has fallen in duty, or armed forces displaying Semper Fi pride of what they believe in. That is the people that are getting the ink. The people who are looking out for your community. It is also people who are looking out for your children. That is my piece and thank you for your time.

Perry: *So drunken sailors do not have a monopoly anymore.*

Mayor Perry made a motion to go back into regular session. Councilwoman McClean seconded and it was approved unanimously, 5-0.

MPT Garriss made a motion to approve the proposed text amendment defining tattoos studios and adding the proposed special use and associated conditions as recommended by the planning board to BC-2, VC-2 and VC-3 districts. The town council has found this proposal to be consistent with the towns adopted Land Use Plan. It was seconded by Councilman Pruitt and passed unanimously, 5-0.

c.) Zoning Text Amendment: Staff initiated proposal to amend Sec. 42-1 to define and limit the number of "accessory living structures", structures containing conditioned living space that does not meet the definition of either a dwelling unit or an accessory dwelling unit.

Mayor Perry made a motion, seconded by Councilwoman McClean, to go into public hearing. The vote was unanimous, 5-0.

Planner Testerman reviewed the following staff report.

Proposal

Staff originally proposed two new definitions, one for "accessory living structures" and one for "accessory dwelling units", the difference between the two structures being whether independent cooking facilities exist in the structure. The Planning Board recommendation eliminated the proposed definition of "accessory living structure" and added verbiage that would define all accessory structures with finished/conditioned living space as an "accessory dwelling unit."

The text amendment, as recommended by the Planning Board, is to add a new definition for *Accessory Dwelling Unit*:

Accessory dwelling unit means a secondary dwelling unit established in conjunction with and clearly subordinate to a principal dwelling unit, whether part of the same structure as the principal dwelling unit, or as a detached structure on the same lot, with or without independent cooking facilities.

In 2018, when the Town adopted standards and specifications for ADU's, the amendment did not include a definition of an ADU, therefore staff proposed the above definition for clarity. The definition that staff proposed only included structures with independent cooking facilities to be included as an ADU. In addition, staff proposed a separate definition for other accessory living structures, being those structures with finished/conditioned living space, but no independent cooking facilities. During the planning board discussion, the Board felt that having two separate definitions, and different sets of requirements for the two types of structures, with the only difference being whether cooking facilities are present, would be confusing for the general public, and opted to recommend all accessory structures with conditioned/living space be considered Accessory Dwelling Units and be bound by the regulations listed in 42-528.

Kitty Hawk Town Council Minutes: October 4, 2021

Page 15

Background

As mentioned above, in 2018, Kitty Hawk Town Council adopted a text amendment that allows the development of one "Accessory dwelling unit" per residential lot, with a number of specific site requirements that the ADU must meet. A "dwelling unit" is defined as "one room, or rooms connected together, constituting a separate, independent housekeeping unit for owner occupancy, or rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities for a single family." It has long been interpreted that the "independent cooking" facilities were to mean a stove or stove connection. The proposed definition, as recommended by the Planning Board, would eliminate the need for "independent cooking facilities" to be present for an accessory structure to be considered an ADU.

The requirement for having cooking facilities to be considered a "dwelling unit" leaves open the possibility of creating an accessory structure with conditioned living space that is not bound by the requirements for an ADU, listed in 42-528 (printed below). Specifically, as it relates to this proposal, these accessory structures with living space are not currently restricted by number on a lot. Kitty Hawk has no limit on how many accessory structures a property owner can have on a lot, as long as the total lot coverage does not exceed 30% and all setback requirements are met. So, a loophole has been created wherein there is potential to have one lot with multiple structures that are developed for habitation, but with no stove or stove connections they are not considered "dwelling units" and thus are not bound by ADU requirements. To be clear, the proposed amendment would not limit the number of accessory structures on any given lot, only those with conditioned/finished living space.

The reason for the proposed text amendment is that in recent months, the Planning Department has had multiple inquiries about the potential of developing a single-family dwelling, with multiple separate accessory structures, each containing living space, but not meeting the definition of a dwelling unit. The Town Attorney, in reviewing the land use plan, and the scope and intent of various zoning districts has developed an opinion on the matter ruling that it is not permissible, but staff and attorney agreed that it would be best to codify this, to avoid any future confusion.

As noted, the recommended text amendment would require all accessory structures that contain finished living space to adhere to the requirements of 42-528. The regulations that would impact these structures the most, with regards to site planning are a size limit of 800 sq. ft., or 50% of the primary residence, whichever is less; the structure would be required to be located in the rear or side yard, not to project beyond the front of the primary residence; one additional parking space will be required, and no separate driveway; no more than one ADU on any lot; maximum height of the ADU is 28' from grade, or the height of the primary residence, whichever is lower.

For Council's reference the staff proposed definition of an "accessory living structure", which was omitted from the Planning Board recommendation, would have applied to accessory structures with finished/conditioned space that did not meet the definition of an ADU (no cooking facilities), would have limited them to one per parcel, limited the size to 800 sq. ft., and noted that one could not be permitted on the same lot as an ADU. The other requirements of 42-528 were not included in the proposed definition. The originally proposed definition for "accessory dwelling unit" was identical to what is shown in this staff report, however, it omitted the words "or without" relating to independent cooking facilities.

Attachments:

42-528. Accessory Dwelling Units
Staff proposed definitions

Consistency with Land Use Plan

The following policies and objectives relevant to this application are stated in the CAMA Land Use Plan:

Policy #17a: Kitty Hawk will continue to adopt, enforce, and amend as necessary ordinances and procedures to regulate land use, development, redevelopment, and to protect the unique character of the Town and supports applicable State and Federal laws and regulations regarding building, land uses and development.

Kitty Hawk Town Council Minutes: October 4, 2021
Page 16

Policy #17d: Kitty Hawk will continue to regulate building intensity and oversized structures by enforcing, and amending as necessary, the zoning ordinance. The zoning ordinance regulates building intensity factors such as building height, lot coverage, and building setbacks for commercial and residential building development. The ordinance also specifies maximum and minimum building sizes for commercial development.

Objective #17b: Ensure future development is consistent with adopted goals, objectives and policies and regulations including building code requirements and is in character with existing develop with respect to features such as building size, lot coverage, architectural design standards, and construction materials and methods.

Objective #17c: Adopt regulations and procedures that provide clear direction to assist local decision making and consistency findings for zoning, divisions of land, and public and private projects.

Planning Board Recommendation

At its September 16, 2021 meeting, the Planning Board unanimously recommended approval of the revised text amendment, as presented in this staff report.

-Adopted February 5, 2018-

Sec. 42-528. - Accessory dwelling units.

- (a) Accessory dwelling units may be attached (located within the principal residence) or in a detached structure on the lot, provided requirements for lot coverage and setbacks for the district are met.
- (b) Accessory dwelling units shall not be larger than 50 percent of the living area of the primary residence, or 800 square feet, whichever is lesser.
- (c) A detached accessory dwelling unit shall be located in the established rear or side yards, provided that the detached accessory dwelling does not extend beyond of the front of the primary residence.
- (d) Accessory dwelling units shall not be served by a driveway separate from that serving the principal dwelling.
- (e) One additional off-street parking space shall be provided for the accessory dwelling unit.
- (f) No more than one accessory dwelling unit shall be permitted on a single residential lot.
- (g) Detached accessory dwelling units shall not exceed 28 feet in height, measured from average original grade, or the height of the principal dwelling on the property, whichever is lower.
- (h) The owner must obtain a permit from the county environmental health department that indicates the septic system is sufficient for the increased occupancy. Total occupants residing on the property shall not exceed the number specified by the septic improvement permit.
- (i) Accessory dwelling units may be used for home occupation uses, in compliance with section 42-522, but in no instance shall more than one home occupation be conducted or permitted on a single lot. Additionally, the accessory dwelling unit is not permitted to used entirely for commercial purposes.
- (j) Before obtaining a building permit for an accessory dwelling unit, the property owner shall file with the county register of deeds a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner stating that the accessory dwelling unit shall not be sold separately from the primary residence.

Original Staff Proposed Definitions:
42-1. Definitions

Accessory dwelling unit means a secondary dwelling unit established in conjunction with and clearly subordinate to a principal dwelling unit, whether part of the same structure as the principal dwelling unit, or as a detached structure on the same lot, with independent cooking facilities.

Accessory living structure means any conditioned and/or finished living space that is in conjunction with and clearly subordinate to the primary residential structure but does not meet the definition of "dwelling unit". Accessory living structures shall have no independent cooking facilities. Accessory living structures are limited to one per parcel. Accessory living structures are limited to 800 square feet of livable space. An accessory living structure shall not exist on the same lot with an accessory dwelling unit.

Kitty Hawk Town Council Minutes: October 4, 2021
Page 17

As noted in the staff report, the Planning Board recommendation eliminated the proposed definition for "Accessory living structure" and added verbiage that would tie all accessory structures with living space to the definition of "accessory dwelling unit."

Perry: *This is a case where words matter. I do not think any of the council realized we were doing accessory living structures. Rob came to me and said he has a request to do an accessory, about 4 or 5 of them, on a lot and from there it just mushroomed. I said no, that is not Kitty Hawk. That is just not what Kitty Hawk has been from the day it was envisioned in 1981. In fact, just the opposite. They wanted to close the gate and let nobody else in.*

So, I told Rob to get with the attorney and get all this rounded up so we can stop this. Otherwise, we are going to be the VRBO capital of Dare County. When they did their research, they said yes that is not what Kitty Hawk was set up to be.

Then I told Rob I do not want people not to have accessory structures. Again, this is where words matter. I am talking about a barn, a garage, a workshop. Things that we normally think of. Rob was keyed in on accessory living structures, so he thought I meant ... I do not want to kill all accessory living structures. You see how words matter.

We are still accomplishing what we want but words do matter, and I did not say the right word or did not phrase it right, but he got it right. This is what we are what we are looking at now. We did not know this was happening until we did the accessory dwelling units. That was to try and add living space for people in Dare County. Everybody knows how that has been a real problem. We tried to have some measure of where it is put, how it is put and what is put.

Pruitt: *Just for clarification. I build sometimes in the winter and some of them have been right here in Kitty Hawk. I have been a part of the accessory dwellings that are in front of a house. At times the stoves and everything were just left out, but it was finished off as a normal home would be. After an occupancy permit was received, they put in whatever they wanted. Is what we are doing now going to clear up the ability to do that in front of your house? They start out and call it an accessory building and then the second ... because they do not have room either beside them or behind them, but they have a bunch of land out front, so they say they are putting in an accessory building out front and the second everybody is gone they put the stove in there and you have a nice 800' square foot home.*

Testerman: *Unfortunately, we cannot control what people do after the final inspection is done and the certificate of occupancy is given.*

Varnell: *But they do lose the incentive.*

Pruitt: *Correct.*

Varnell: *And I think that is kind of what you are getting at.*

Kitty Hawk Town Council Minutes: October 4, 2021
Page 18

Pruitt: *If a neighbor was to come to the Town of Kitty Hawk and say they have an Airbnb in that supposedly accessory building out in front of their house, is there something the town is going to be able to do to correct that?*

Testerman: *If it was permitted as just an accessory living space with no kitchen or anything it would not have to abide by 42-528. Then, after they got their certificate of occupancy and put the stove in, if we got a complaint, we could issue a zoning violation letter and they would have "x" amount of days to bring it back into compliance or start getting civil fines.*

Pruitt: *Okay.*

Testerman: *Currently the accessory structure living space is not bound to the 42-528 so you could build one in ... we have a number of detached garages in the front yard with living space above it and this would, the way the planning board recommended it, would prohibit that in the future as well as create a fair amount of non-conforming structures.*

Garriss: *So, from this day forward it would be fine. I know this has been a headache for you and for us for a long time.*

Testerman: *It would make it cleaner to just consider them all the same and take away what happens after they get their occupancy permit if it is all bound by the same language. Again, it only applies to if you have living space in the accessory structure. Like the mayor pointed out we are not limiting sheds or barns or anything like that. It is essentially putting in place you can have a house and one other structure of living space on any given lot, but you are not going to be able to develop four or five different units, a little compound on your lot.*

Pruitt: *And this would be caught by a building inspector during the process of building an accessory building. Would he not be able to tell that they are building bedrooms and putting bathrooms in. Or are they allowed in accessory ...*

Testerman: *Currently the accessory structures, the only thing that kicks into the accessory dwelling unit requirements is a cooking facility. If somebody has a plan for a 2,000 square foot single family house and they have a plan for a 1,000-foot structure with two bedrooms, a bathroom and a living room but no kitchen facility we do not have anything that would limit where that would go on the lot as long as it meets the setbacks and lot coverage requirements because it is not considered a dwelling without the kitchen, the cooking facility. In doing this we catch those, and it would not matter if they had a kitchen or not. You would be bound by this.*

Pruitt: *By the living spaces, right? The bathroom ...*

Testerman: *Right. Kitchen or not they would be bound by this. Like Casey said it would not have the incentive to permit one thing and then go in later and put the stove in after we are all done with our inspections because they would have to meet the requirements anyway.*

Kitty Hawk Town Council Minutes: October 4, 2021
Page 19

Stewart: *They are allowed to have one structure in addition to their house in most places that just has livable space in it, and we do not care if they put a stove, two stoves whatever, as long as they get a permit. But they are allowed only that one living structure whether it has a stove or not.*

Pruitt: *An extra.*

Stewart: *An extra, yes.*

Pruitt: *But with the new proposal, the way I read it, the ones that are out in front of the house that have been accessory dwellings and then built completely as an Airbnb and then a hot plate is put in even as it is being built because it is allowed there, our new code says ... and it is way up in the air and it is higher than the dwelling behind it and now it has to be lower than the dwelling that you live in. Correct?*

Stewart: *If it has been permitted as that it would be legally non-conforming basically.*

Testerman: *We would not tell anybody to tear it down but if it got destroyed by a fire or anything like that then I believe it would have to be rebuilt in accordance with this. If anybody has one in the front yard now, we will not start sending letters.*

Pruitt: *I understand but this is going stop that.*

Varnell: *Correct.*

Pruitt: *That is what I wanted to hear.*

Hines: *By what we are doing ... I am getting a little confused by the with a stove and without a stove. I mean you are still allowing people to have one unit with a stove or without. Correct?*

Testerman: *Yes. It takes out the ... right now everything that is in Section 42-528 hinges on if there is a stove in the plans for it. This definition the planning board recommended takes that out and any accessory structure with living space falls under 42-528, stove or no stove.*

Perry: *You can have a garage, you can have an ADU, you cannot live in a garage, you can only have an ADU. That is it. What happened before had to be dealt with from a different perspective. They put a stove in it then they were no longer conforming but that was the only option you had for what came before. After we do this, assuming we pass this tonight, then you can have an ADU, house, garage or whatever but you cannot live in it. And when they are going to build that I am assuming we have building plans so that is where your building inspector comes in.*

Pruitt: *That is what I was trying to get at. Thank you.*

Kitty Hawk Town Council Minutes: October 4, 2021
Page 20

McClean: *What defines living space? Are we talking about climate controlled, plumbing, what defines living space?*

Perry: *We are trying to give people the right to have a mother-in-law suite or whatever. It is not really designed for VRBO, but I know it turns into that. There are things you can control and some that you probably cannot. Some people live on a street, some people live in open barns. I do not know where you want to go with that.*

McClean: *I am looking at property ... a 2,000 square foot house. They end up putting an accessory dwelling unit because mother-in-law, college student, son they do not want them in the house anymore. They are tired of his music or whatever. They have an accessory dwelling unit and now they put a pool in, and they have a pool house. In the pool house they put climate control and they put a bathroom because it makes it a whole lot easier not to have to trek drippy through the house to a bathroom. So now you have a pool house, air conditioned and it has a bathroom. A couple gets into an argument, the guy goes out and sleeps in his pool house. I mean is somebody going to say no you cannot go to sleep in your pool house because it is not a living ... Casey is shaking his head. I am just looking for all these things that people are going to take exception to. What if somebody down the road says hey Cousin Joe you can live in my pool house for the summer. Just pay me \$60 a month and now we do have someone living in the pool house.*

Perry: *How complex do you want to make this? Do you have anything else?*

McClean: *No.*

Perry: *It is time to see if anybody out there wants to speak. Let the record show no one came forward.*

Mayor Perry made a motion to go back into regular session. It was seconded by MPT Garriss and the vote was unanimous, 5-0.

Councilman Pruitt made a motion to adopt the proposed text amendment to Section 42-1 defining accessory dwelling unit. The town council has found this proposal to be consistent with the town's adopted Land Use Plan. MPT Garriss seconded and it passed unanimously, 5-0. Ordinance. No 21-10

8. PLANNING:

a.) Nonconforming Pier Replacement: Proposal to replace an existing nonconforming pier, located at 3800 Elijah Baum, with a wider pier and larger platform.

Testerman reviewed the following staff report.

Background
Sec. 42-360.- Sound waters district

Kitty Hawk Town Council Minutes: October 4, 2021
Page 21

(e) *Nonconformities; exception.* Piers exceeding 100 feet waterward of the mean high-water mark of Kitty Hawk Bay or the sounds on the effective date of the ordinance from which this division is derived, can be maintained, repaired, and replaced as needed notwithstanding any provision in this chapter to the contrary. The pier length, width, and height cannot be increased without prior town council and planning board approval. A nonconforming pier authorized under this subsection shall install and maintain lights or reflectors in accordance with subsection (c)(2)e. of this section.

The Town Council is being asked to review and make a motion on the replacement pier as it is currently 130.5' in length, which exceeds the currently permitted 100' length. The ordinance states that the pier can be replaced as needed, however, any changes in length, width, and/or height must be approved by the Planning Board and Council.

As noted in the attached proposal, as a part of this replacement, the owners would like to add a boat lift and kayak launch to the platform at the end of the pier. This would not be possible at 100' as the water is too shallow. The replacement pier is also proposed to be shift to the west on the property as it will also allow the boatlift to be placed in slightly deeper water.

It is staff's interpretation that the pier being shifted to a new location is permissible as the nonconformity is the pier length, not the location. As the proposal is remaining at 130' in length, the portion that Council must review is the enlarged and reconfigured platform at the end of the pier, and an increase in pier width from 4' to 5'.

It should be noted that Council's decision will not supersede any required approvals/permitting from CAMA. Council is being asked to review and make a decision on the zoning aspect of the pier replacement. If Council approves of the request, the applicant will still be required to comply with all CAMA regulations.

Planning Board Recommendation

At its September 16, 2021 meeting, the Planning Board unanimously recommended approval of the proposed replacement of a nonconforming pier, allowing the replacement to increase in width from 4' to 5', and allow the enlargement and reconfiguration of the platform at the end of the pier.

Perry: *The only question I have is the applicants are listed as an LLC. I think there are 3 owners. I was looking at the proposal for the new pier and the question came to mind if this is possibly going to be a business?*

Testerman: *I do not believe so.*

Perry: *The kayaks, the way they set this thing up, widening the pier, makes you wonder.*

Pruitt: *What zone is that Rob?*

Testerman: *VR-I.*

Perry: *I think they are going to have trouble with CAMA going more than 3 feet.*

MPT Garriss made a motion, seconded by Councilman Hines, to approve the proposed plan to replace the existing non-conforming pier with a large pier and platform as per the attached plan not to exceed 130.5 feet in length. The vote was unanimous, 5-0.

b.) Schedule Public Hearing: Zoning Text Amendment: Proposal to amend Sec. 42-1; 42-619; 42-622; 42-275 to amend existing travel trailer park regulations, and to add as a special

Kitty Hawk Town Council Minutes: October 4, 2021
Page 22

use in the VR-3, high density village residential district. The applicant has requested this hearing be scheduled for the December 6, 2021 council meeting.

Councilman Pruitt made a motion to set a public hearing at the town council meeting on December 6, 2021 to consider the proposed text amendment to Chapter 42 to amend the current trailer park regulations and add the proposed recreational vehicle park as a special use in the VR-3 high density Village Residential District. Councilwoman McLean seconded and it passed unanimously, 5-0.

9. NEW BUSINESS:

a.) Nominations for the Outer Banks Visitors Bureau Tourism Board

Perry: *We must make nominations and the elections are not over yet.*

Garriss: *Is there any way to postpone this until the December meeting? Until after the election?*

Pruitt: *I think we could, but we have three people to nominate that are sitting here now to fill the position.*

Perry: *I am going to nominate David Hines, Lynne McClean and Craig Garriss. He is running unopposed and unless something strange happens, he will be mayor. Councilman Pruitt seconded and the vote was 5-0.*

Perry: *For order of preference, I am going to nominate David as one, Lynne as two, and Craig Garriss as three. Councilman Pruitt seconded and it passed unanimously, 5-0.*

b.) Consideration of Additional Sand Placement in “Hot Spot” Areas

Manager Stewart reviewed the following staff report.

Proposal: Approve additional sand placement in “hot spot” areas as recommended by Coastal Protection Engineering of NC, Inc.

Background Information: The Town of Kitty Hawk and Dare County recently received bids for the 2022 Beach Renourishment project. The budget for the renourishment project was estimated by Coastal Protection Engineering to cost an estimated \$10,416,000. On September 2, 2021 the county held a bid opening and received bids from (3) three dredging contractors. The low bid for the project after review by the engineer was Weeks Marine, Inc. The Town of Kitty Hawk’s portion of the project was bid at \$8,214,135.

Dare County and the Town of Kitty Hawk will each receive credit proportionately to each entity’s contribution towards the project. The original amount to be paid by the Town was budgeted at \$5,387,682. However, the Town’s contribution required after the bid opening was \$3,951,073.

The Town engineer is recommending using the Town’s portion of the bid savings (\$1,436,609) and favorable bid to place more sand volume in several identified “hot spot” areas. The attached email identifies these areas as identified by Coastal Protection Engineering.

Kitty Hawk Town Council Minutes: October 4, 2021
Page 23

The additional sand placement would provide greater protection in areas that have been identified as “hot spot” areas that cause a greater potential for loss of Town and State infrastructure. The placement of this additional sand would be within the Town’s estimated budget for the 2022 Beach Renourishment project.

Manager Stewart said one of the hot spots is around Fonck Street and the other is near the Sea Dunes Townhomes.

Perry: *When you add sand out a little bit it makes a bump and in the past the engineer said it tends to wash away sooner than it would otherwise. So, the question was is it beneficial to spend the money to do it. They thought it was. In fact, it has been because with the initial construction the berm line was pretty static, and they had extra sand because the storms brought it in. It buried some of their equipment. They wound up with extra sand and asked us if we wanted the money back or do we want to put the sand in front of what is now the Bath House and Sea Dunes. We said we do not want the money back. We want you to put the sand out there. If you go look at the front of the Bath House and Sea Dunes, it is probably a good thing we did because that sand is pretty much gone. We still have a double dune system so if we can get through this winter and get some more sand out there and then get a little extra in those spots that have anomalies as they call them it will be worth it. Yes, we should do this.*

I also want the public to understand that the county, normally, if there is a savings, would keep it and add it to the fund but in this case, they are going to share it. That means first off, we did not have to raise the MSD tax because we came in under the bid. What we are doing here will not add anything to the current MSD or cost our citizens anything extra than what they are paying right now. Is that a correct statement?

Stewart: *Correct. The town is going to finance the project for five years and the money that we are collecting for those five years will be spent for this next upcoming project.*

Perry: *We have been very lucky.*

Mayor Perry made a motion to approve the additional sand placement as identified by Coastal Protection Engineering. Councilwoman McClean seconded and it passed unanimously, 5-0.

c.) Presentation of Conceptual Floor Plan for New Police Station and Fire Bay

Manager Stewart showed a slide of the floor plan and the exterior of the proposed building for the new police station and fire bay. He also mentioned sending a letter of interest for a BRIC grant (Building Resilient Infrastructure and Communities) through FEMA to help pay for it. It is a flood mitigation grant and because the current station is in a flood zone the town may have a good chance of getting it.

Pruitt: *Is there anything in the tower that is shown or is it wasted space?*

Kitty Hawk Town Council Minutes: October 4, 2021
Page 24

Johnson: *At one time there was a door with a ladder for firefighter training. That is an old picture.*

Perry: *That is the architect trying to do the coastguard watchtower concept. That has been around forever and needs to go away. It can look good without it. One thing I noticed when I looked at the floor plan and at the opening where the tower is, some things do not line up. I am not quite sure how that works. I am assuming the architect will get it right and get us what we need without too much gingerbread. We want it functional, practical and expandable. Anybody else? Then your instruction to the manager is to proceed?*

Councilmembers said yes and as quickly as possible.

10. TOWN MANAGER

Manager Stewart announced the following:

Chipping Service: October 25th.

Flu shots: A community drive through flu shot clinic at the Kitty Hawk Town Hall. It is provided by The Outer Banks Hospital and will be on Thursday, October 21st from 2:30 to 5:30. You must call 449-4529 for an appointment.

Municipal Candidate Forum: Sponsored by the League of Women Voters of Dare County to be held virtually on Tuesday, October 5th at 6:30. Visit the League website for more information.

November 1st council meeting: Begins at 5:00 p.m. due to the election the next day.

Mentioned again applying for a **BRIC grant** through FEMA for \$2.5 million for the police station.

11. TOWN ATTORNEY

There were no comments or announcements from the attorney.

12. TOWN COUNCIL

Garriss: *Thanks to the staff. It has been a busy summer, but it is winding down. Thanks for everything you do. I am very happy to see we are inching along on the police station. Let's keep moving forward on that. Elections are coming up so everybody turn out and vote. Thank you.*

McClean: *I echo what Craig said and be safe out there.*

Pruitt: *We had a couple of our police officers retire. Sgt. Strickland after 28 years in law enforcement and Sgt. Wiggins after 21 years in law enforcement. I would like to thank them for their service to the Town of Kitty Hawk.*

Kitty Hawk Town Council Minutes: October 4, 2021
Page 25

Also, we have a young man who lives in Kitty Hawk Landing, David Phillip Meggs III, and he is going to become an Eagle Scout on October 23rd. Congratulations to him.

13. CLOSED SESSION

Following council's decision that they did not need a closed session for (a) NCGS 143-318.11(a)(3) **Mayor Perry made a motion to go into closed session for NCGS 143-318.11(a)(6) Town Manager Evaluation. Councilwoman McLean seconded and it passed unanimously 5-0. Time was 7:32 p.m.**

a.) NCGS 143-318.11(a)(3) To consult with the town attorney to protect the attorney client privilege (not needed)

b.) NCGS 143-318.11(a)(6) Town Manager Evaluation

14. RETURN TO REGULAR SESSION

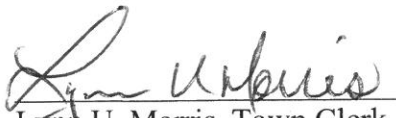
Councilman Hines made a motion, seconded by Councilman Pruitt, to return to regular session. It was unanimously approved, 5-0. Time was 7:40 p.m.

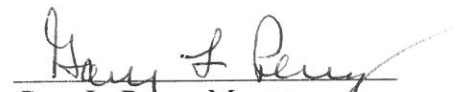
Mayor Perry announced the council had held a performance evaluation of Manager Stewart. No formal action was taken.

15. ADJOURN

A motion was made by MPT Garriss to adjourn. It was seconded by Mayor Perry and unanimously approved, 5-0. Time was 7:53 p.m.

These minutes were approved at the November 1, 2021 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor